



Massachusetts Department of Elementary and Secondary Education

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November 1, 2021

Dr. John Provost, Superintendent
Northampton Public Schools
212 Main Street
Northampton, MA 01060

Re: Intake PRS 5507
Student Name:
Letter of Finding

Dear Superintendent Provost:

On March 31, 2021, the Massachusetts Department of Elementary and Secondary Education (Department) received a written statement of concern from (Complainant) involving Northampton Public Schools (District). As the Problem Resolution System (PRS) Specialist inquiring into this matter, I have taken the following steps:

- Reviewed the statement of concern and supporting documentation
- Requested a Local Report from the District
- Received amendments to the Request for Local Report from the Complainants on May 5, 2021, following a mediation
- Reviewed the District's Local Report and supporting documentation submitted to the Department on May 12, 2021
- Reviewed the Complainant's responses to the District's Local Report submitted to the Department on May 17, 2021
- Issued an Extension Letter on May 28, 2021 per Complainant's request
- Checked in with the Complainant regularly by email for updates
- Reviewed relevant state and federal special education laws and regulations
- Consulted with other Problem Resolution System staff

PRS' inquiries determined noncompliance, and we are advising the District of our findings and the required corrective actions. The concerns, our findings, and corrective actions follow.

CONCERNS NOT INVESTIGATED BY THE DEPARTMENT

In the Department's initial review of the statement of concern from the Complainant, we advised the Complainant of certain concerns that are outside of the Department's investigation window. The Department investigates allegations that occurred within one year of the receipt of the complaint on March 31, 2021.

See, as guidance: <http://www.doe.mass.edu/prs/guide/default.html>. The following allegations occurred more than one year ago:

- The Complainant alleged the District did not properly identify the student as a “child find” candidate after the Complainant expressed concerns about _____ in the 1st grade.
- The Complainant alleged the District did not perform follow up screenings for _____ issues in 2nd grade due to the school psychologist’s misidentification of the student as a child with _____
- The Complainant alleged the District failed to provide the student _____ support in the 3rd grade despite indications of _____ and the provision of Title I services in 2nd grade.

CONCERNS INVESTIGATED BY THE DEPARTMENT

1. The Complainant alleged the District failed to timely review an Independent Educational Evaluation (IEE) of the _____ 4th grade student, obtained at private expense. Specifically, the Complainant presented the District a copy of the IEE on July 31, 2020, and the District did not convene the Team to review the IEE until November 6, 2020. This concern, regarding an IEE obtained at private expense, was investigated pursuant to 34 CFR 300.502(1):

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation -

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child;

2. The Complainant alleged the District did not timely provide a copy of the student’s IEP following a Team meeting on November 6, 2020. Specifically, the Complainant did not receive summary notes until December 16, 2020, and did not receive a copy of the IEP until the week of December 21, 2020. This concern was investigated pursuant to 603 CMR 28.05 (7) including:

(7) Parent response to proposed IEP and proposed placement. Immediately following the development of the IEP, and within 45 school working days after receipt of the parent's written consent to an initial evaluation or reevaluation, the district shall provide the parents with two copies of the proposed IEP and proposed placement along with the required notice, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e) in a limited number of cases.

(a) No later than 30 days after receipt of the proposed IEP and proposed placement, the parents shall:

1. *Accept or reject the IEP in whole or in part; request a meeting to discuss the rejected portions of the IEP or the overall adequacy of the IEP; or if mutually agreed upon, accept an amended proposal; and*

2. *accept or reject the proposed placement.*

And, as guidance: *Special Education Memorandum on the Implementation of 603 CMR 28.05(7): Parent response to proposed IEP and proposed placement News Article - Massachusetts Department of Elementary and Secondary Education*

3. The Complainant alleged the District failed to implement the student's IEP during the 2020-2021 school year. Specifically, the District did not provide adequate supports or services per the IEP, and the District failed to develop or provide a Special Education Learning Plan (SELP) describing how the student's IEP services would be delivered differently in a remote setting. These concerns were investigated pursuant to 603 CMR 28.05(7)(b):

Upon parental response to the proposed IEP and proposed placement, the school district shall implement all accepted elements of the IEP without delay.

- *Amendment as of 5/5/21 [submitted by Complainant via email to the District and the Department] per a settlement agreement achieved through mediation with the district, we are amending the PRS complaint. We are willing to accept the offer of 9 compensatory speech sessions instead of the 11 documented times missed.*

The Department will also review this allegation using the Department's Guidance on Fall 2020 Special Education Services issued on July 9, 2020:

"If special education services are provided differently than as they are described in a student's IEP, parents must be notified in writing with specific information about how those services will be provided after they have discussed such matters with a teacher or IEP liaison. Written parent notification describing any differences in how special education services will be delivered should include how, where and when specialized services are being provided, and should be dated to reflect when services that are being provided differently begin. Parental consent is not required to implement modified in-person, hybrid or remote special education services; however, such documentation should describe the school's and district's efforts to provide services as closely aligned to the way they are described in the IEP as possible. Schools and districts can provide notification of remote services to families in multiple ways, e.g., U.S. mail, email, student information systems, or online communication platforms if schools and districts

determine that parents can access online communications effectively."

4. The Complainant alleged the student's IEP is not reasonably calculated to meet the student's needs. Specifically, the IEP does not provide adequate, evidence-based services to address despite repeated test results demonstrating the student's and issues. This concern was investigated pursuant to 603 CMR 28.05 (4)(a)-(b):

(4) Contents of the IEP. Upon determining that the student requires special education and based upon the evaluative data, the Team shall write an IEP for the student and decide the student's placement. The IEP shall describe the special education and related services that the student requires and shall include all elements required under federal and state law.

(a) The IEP shall include specially designed instruction to meet the needs of the individual student and related services that are necessary to allow the student to

benefit from the specially designed instruction, or may consist solely of related services that are necessary to allow the student to access the general curriculum, consistent with federal and state requirements.

(b) The Team shall carefully consider the general curriculum, the learning standards of the Massachusetts Curriculum Frameworks, the curriculum of the district, and shall include specially designed instruction or related services in the IEP designed to enable the student to progress effectively in the content areas of the general curriculum.

- *Amendment as of 5/5/21 [submitted by Complainant via email to the District and the Department] per a settlement agreement through mediation with the district, we amend the PRS complaint. We are willing to acknowledge that the district provided a tutor that happens 4 x 60 weekly in our home prior to school each morning. This requires to miss 20-30 minutes every morning of school at in order to accommodate a tutor paid for by the district. Because of covid 19, no space was available in the school for this service. This intervention is assisting with our child's but is not incorporated within an IEP grid and will not last the length of the current partially rejected IEP. This service does address the lack of supports provided during the 2020-2021 academic year and what was lacking in IEP for support. The district did accept the diagnosis of so we look forward to meeting to discuss the remaining open rejected IEP items and have requested a facilitated team since mediation did not resolve all of the rejected items.*

DISCUSSION

1. The , 5th grade student (Student) qualifies for special education and related services with eligibility in :
2. In the summer of 2020, the Student participated in an Independent Educational Evaluation (IEE) by :
3. According to the District's Local Report (Local Report), the IEP Team (Team) convened to review the results of the evaluation on November 6, 2020.
4. The Local Report states, "regarding the first complaint, the District was in error by not meeting sooner to review the results of the report that was provided during the summer of 2020."
5. The Local Report states, "regarding the second complaint, the District was in error with too much time passing between the meeting to review the report and mailing a proposed amendment that resulted from this meeting. Additionally, while it is the District's practice to share a copy of the meeting summary, including the service grid, with families the same day of the meeting, after the meeting occurs, this did not happen on November 6."

6. The Student participated in remote learning during the 2020-2021 school year until February of 2021 when began attending school on a hybrid schedule.
7. The Student returned to school full time, in-person, in April 2021.
8. According to the District's Local Report (Local Report), the District provided the Complainant an electronic copy of the Student's Special Education Learning Plan (SELP) detailing how remote IEP services would differ from in-person services on September 20, 2020 (after discussing the plan by telephone on September 9th).
9. On November 16, 2020, the District mailed the Complainant a hard copy of the SELP.
10. On March 4, 2021, the IEP Team (Team) convened and developed a proposed IEP (IEP #1).
11. IEP #1 includes three (3) goals: Goal #1: ; Goal #2: ; and Goal #3:
12. IEP #1 includes the following service delivery grid:

A: Consultation (Indirect Services to School Personnel and Parents)

| | Type of Service | Type of Personnel | Frequency/duration per cycle | Start Date | End Date |
|------|-----------------|-------------------|------------------------------|------------|----------|
| 1, 3 | Consult | | 1x300 min/yearly | /2021 | /2022 |
| 2 | Consult | | 1x300 min/yearly | /2021 | /2022 |

B. Special Education and Related Services in Gen Ed Classroom (Direct Service)

| | Type of Service | Type of Personnel | Frequency/duration per cycle | Start Date | End Date |
|---|-----------------|-------------------|------------------------------|------------|----------|
| 1 | | | 5x30 min/5 days | 2021 | 2022 |

C. Special Education and Related Services in Other Settings (Direct Service)

| | Type of Service | Type of Personnel | Frequency/duration per cycle | Start Date | End Date |
|-----|-----------------|-------------------|------------------------------|------------|----------|
| All | | | 4x180 min/4 days | 2021 | 2021 |
| 2 | | | 1x30 min/5 days | 2021 | 2022 |
| 3 | | | 1x30 min/5 days | /2021 | /2022 |

13. The Complainant partially rejected proposed IEP #1 and filed this complaint.
14. The Local Report includes progress reports from December 2020 and March 2021.
15. The progress reports indicate the Student could use more support in
16. On May 4, 2021, the Complainant and the District met for a mediation to address the partial rejection.
17. Following the mediation, the Complainant amended the complaint.
18. The Complainant's amendment to the complaint confirmed accepted the District's offer for 9 compensatory sessions.

19. The District's Local Report (Local Report) indicates the District arranged for 4x60 minutes per week with a tutor "experienced in interventions" (in addition to the 1x30 pull out services from a special education teacher included in the IEP).
20. The tutoring continued through the summer and is still being implemented to address the concern from the progress reporting, and provide compensatory services from 2020-2021, per the mediation agreement.
21. The mediation agreement states the tutoring will be discontinued in the fall but no official date has been set.
22. The Complainant did not believe the mediation addressed the core issue of designing an IEP that addresses the Student's specific needs related to dyslexia.
23. The Complainant's response to the Local Report details specific programming and accommodations the Complainant feels would address those needs.
24. In an effort to address the Complainant's continued concerns, the Local Report states, "the District has agreed to fund the parents' request for an independent evaluation the area of and additional evaluations are included in the [mediation] agreement."
25. On June 9, 2021, the IEP Team engaged in a facilitated IEP meeting to continue addressing the concerns with IEP #1.
26. The Team added 4x15 minutes 5 days per week of intervention for fluency in addition to the 5x30 minutes of pull-out services.
27. The Complainant partially rejected the proposed intervention as she felt 4x15 minutes was not enough time to address the Student's needs.
28. In addition to the mediation and facilitated IEP meeting, the District offered to change the Student's school so the Complainant could work with a new IEP Team.
29. The Complainant agreed to change schools and the Student began attending the new school when school started in September 2021.
30. The Complainant continued to extend this complaint because wanted to work with the new Team to develop an IEP.
31. On October 1, 2021, the new Team convened to develop a proposed IEP.
32. Following the meeting the Complainant sent the District highlighting the continuing concerns:

We are having a meeting with [the Department] to discuss the complaint on Monday. We still don't have an accepted IEP, we can't seem to get more for [the Student], doesn't have a goal, did terrible on every assessment that [the new school] has given him which is consistent with every assessment did at [the former school] and the MCAS.

We are just confused. The Superintendent says that students with disabilities did well on MCAS and exceeded expectations and that the primary focus was on student emotional well-being. But [the Student] seems to be one of the very few who is still failing. We know he was in the bottom 7 in ELA at [the former school]. We love [the new school], the level of professionalism and

communication far exceeds what we experienced at [the former school], but [the Student] is still functionally illiterate and nothing that has been put in place is working. 's not improving. There is no commitment for [the : tutor] to keep working with [the Student] past when the : is completed. There is no improvements and he has a :

If there are so few kids that need any help in the district according to the Superintendent, and there is so much federal money that is supposed to be targeted at the kids with disabilities, shouldn't it be going to kids like [the Student] who not only are far behind but on top of that had multiple years lost at [the former school] who just refused to help him. [The new school] can't be expected, in such limited time with him, to make up for all of that lost time.

Our meeting is in the morning on Monday, and we aren't really sure what to tell [the Department] because we still feel like we are in limbo in terms of [the Student] making any progress towards literacy.

33. On October 4, 2021, the Complainant met via Zoom with the Department to discuss the complaint.

34. Following that meeting, the Complainant asked the Department to make a determination on the existing complaint.

FINDINGS

The following determination represents the Department's interpretation of the relevant legal requirements in the context of the facts presented. The conclusions reached in this letter do not establish a policy, rule, or precedent that would apply in all circumstances.

1. **Based on the information gathered the Department finds, and the District acknowledges, noncompliance with 34 CFR 300.502(1) as the District did not meet to review timely an evaluation from the summer of 2020 until November 6, 2020.**
2. **Based on the information gathered the Department finds, and the District acknowledges, noncompliance with 603 CMR 28.05 (7) as the District did not timely provide a copy of the proposed Amendment or a meeting summary following the November 6, 2020 Team meeting.**
3. **Based on the information gathered the Department finds the District complied with 603 CMR 28.05(7)(b) as the Complainant agreed the District provided sufficient compensatory services for and the District addressed any missed services by providing a tutor 4x60 minutes per week throughout the spring, summer, and fall of 2021.**
4. **Based on the information gathered the Department is unable to determine whether the District complied with 603 CMR 28.05 (4)(a)-(b) as the District and the Complainant disagree on the adequacy of the existing IEP. The Department notes the District has made consistent efforts to address the Complainant's concerns with the IEP including mediation, a facilitated IEP meeting, and changing the Student's school. The Department notes despite these efforts, the**

Complainant believes the Student's IEP does not provide adequate support. Because of these conflicting views, the Department is unable to make a determination regarding the IEP.

CORRECTIVE ACTION REQUIRED BY THE DEPARTMENT

- Conduct a training for all special education personnel to ensure compliance with 34 CFR 300.502(1) and 603 CMR 28.05 (7). Provide the Department a copy of the training materials, including the names and credentials of the presenters and an attendance roster, and provide the Department of the meeting invitation reviewing the evaluations by and notice of proposed IEP (to ensure timeliness) **no later than December 3, 2021.**

Please return all required corrective action by the due date specified to PRSCAP@doe.mass.edu.

Please note that for matters related to special education or Section 504, the parties may seek mediation or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. A hearing, however, is a new proceeding and is not for the purposes of reviewing the Department's decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

While the Department does not consider appeals of its decisions, we would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please call (781) 338-3727 or email jennifer.simpson@mass.gov.

Sincerely,

Jennifer Simpson

Jennifer Simpson, PRS Specialist
Problem Resolution System

Paula Twomey

Paula Twomey, PRS Supervisor
Problem Resolution System

cc: Pam Plumer, Director of Student Services, Northampton Public Schools
Complainant